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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,351	02/06/2004	Gerhard Huber	66374-149-7	5055

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EXAMINER

PAPE, JOSEPH

ART UNIT	PAPER NUMBER
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3612

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/772,351

Applicant(s)

HUBER ET AL.

Examiner

Joseph D. Pape

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>2/6/04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “vehicle” and “vehicle body” in claims 1 and 7, the “one piece” structure in claim 2 and the “trunk lid”, “rear hatch” and “hood” in claims 8-10 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

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the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 3, "movable part" has no clear antecedent basis. On lines 3-4, it is not exactly clear which feature is "swivably mounted to the hinge". On line 4, "hinge in the main support bracket" has no clear antecedent basis. On line 5, it is not exactly clear to which feature the term "its" refers. On line 6, it is not exactly to what feature(s) the "moment of rotation" is introduced. On line 6, it is unclear how the introduction of "a moment of rotation" results in (whereby term) additional structural features. On line 7, it is not clear to which feature the term "that is" refers. The recitation on the last two lines that "only the main support bracket (2) is fastened to the vehicle body" is misleading and misdescriptive in that in the figure and as described in the specification bolt 6 is used to both connect the main support bracket 2 to the rigid extension piece and to the vehicle body. Thus, at least the rigid extension piece is directly fastened to the vehicle body and the other features are indirectly fastened to the vehicle body which renders the

assertion on the last two lines to be misdescriptive of the disclosed invention. On the last line, "vehicle body" has no clear antecedent basis.

In claim 4, line 4, "far end" has no clear antecedent basis.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 2, and 7-10, as understood, are rejected under 35 U.S.C. 102(e) as being anticipated by Willard.

Willard discloses the claimed invention including main support comprising the front portion of element 42, hinge 72, lever made up of portions 66, 68, driving device 80, and rigid extension piece comprising the rear portion of element 42 extending rearwardly from where the driving device engages 42 element 42.

Re claims 8-10, the movable part 20 can be referred to as a trunk lid, a rear hatch or a hood as broadly as recited.

6. Claims 1, 7, and 7-10, as understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Seyler.

Seyler discloses the claimed invention including main support 23, hinge 22, lever 24, driving device 15, and rigid extension piece 19.

Re claims 8-10, the movable part 20 can be referred to as a trunk lid, a rear hatch or a hood as broadly as recited.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claim 3, as understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Willard.

Willard discloses the claimed invention except for the extension piece and the main support bracket being constructed from separate parts interconnected.

It would have been obvious to one having ordinary skill in the art at the time the invention was made the main support bracket and the extension piece of Willard to be separable as an obvious construction arrangement as supported by *In re Dulberg*, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961).

10. Claim 3, as understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Seyler.

Seyler discloses the claimed invention except for the extension piece and the main support bracket being constructed from separate parts interconnected.

It would have been obvious to one having ordinary skill in the art at the time the invention was made the main support bracket and the extension piece of Seyler to be separable as an obvious construction arrangement as supported by *In re Dulberg*, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961).

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11. Claims 5 and 6, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Willard.

Willard discloses the claimed invention except for the working cylinder being powered by hydraulics.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to power the spring cylinder of Willard by hydraulics as an obvious choice of a notoriously well known, functionally equivalent biasing means.\

Re claim 6, Willard, as modified, discloses the claimed invention except for the working cylinder being attached with the rod connected to the extension piece and the cylinder connected to the lever.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to reverse the parts of the working cylinder of Willard, as modified, so that the rod is connected to the extension piece and the cylinder is connected to the lever as an obvious matter of reversal of parts as supported In re Gazda, 219 F.2d 449, 104 USPQ 400 (CCPA 1955).

12. Claims 5 and 6, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Seyler.

Seyler discloses the claimed invention except for the driving device being powered by a hydraulic cylinder.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute a hydraulic cylinder driving device for the spring of

Seyler as an obvious choice of a notoriously well known, functionally equivalent biasing means.

Allowable Subject Matter

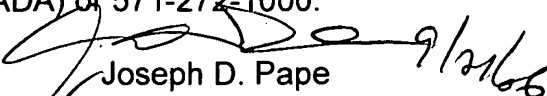
13. Claim 4 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph D. Pape whose telephone number is (571)272-6664. The examiner can normally be reached on Tuesday-Friday 6:30 AM-3:00 PM.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JDP
9/21/06


Joseph D. Pape
Primary Examiner